

REMARKS

In reply to the Office Action of June 12, 2008, Applicant submits the following remarks. Claim 33 has been amended to remove "aluminum". Applicant respectfully requests reconsideration in view of the foregoing amendment and these remarks.

Double Patenting Rejection

The claims were rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 30 of U.S. Patent No. 6,887,733 ("the '733 patent") in view of Brown. Applicant respectfully disagrees.

Claim 30 of the '733 patent reads as follow.

30. An organic electronic device, comprising: a substrate, having an active region defined thereon, the active region including an active component; a getter layer deposited directly on the active region, *the getter layer including an alkaline earth metal*; and a cap mounted over the active region to seal the active region.

The present application includes three independent claims, claims 1, 20 and 33. Claim 1 requires "a metal layer [that] consists essentially of aluminum, tantalum or zirconium". Claim 20 requires "a metal layer . . . [that] consists essentially of aluminum, tantalum or zirconium". Amended claim 33 requires "a metal layer . . . [that] consists essentially of tantalum or zirconium".

MPEP 804 states "A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s)." Applicant submits that at least because the claims have been amended during prosecution such that they do not recite a layer including an alkaline earth metal, but rather claim a metal layer that consists essentially of either aluminum, tantalum or zirconium (claims 1 and 20) or tantalum or zirconium (claim 33), the claims of the present application are patentably distinct from claim

30 of the '733 patent. For at least this reason, applicant submits that there is no *prima facie* case of obviousness with respect to claim 30 of the '733 patent.

Section 102 Rejection

Claim 33 was rejected under 35 U.S.C. 102(e) as allegedly being anticipated by U.S. Publication Number 2003/0227255 ("Auch"). The applicant respectfully disagrees in light of the amendment to claim 33.


Claim 33 has been amended to delete "aluminum" and now recites "a metal layer . . . [that] consists essentially of tantalum or zirconium".

Auch recites a protective conductive layer formed of silver, platinum, chromium, gold or aluminum [paragraph 8]. Auch fails to suggest or disclose a metal layer . . . [that] consists essentially of tantalum or zirconium. Therefore, applicant submits that claim 33 is not anticipated by Auch. Applicant respectfully requests withdrawal of the rejection.

The one-month extension of time fee in the amount of \$130 is being paid concurrently herewith on the Electronic Filing System (EFS) by way of Deposit Account authorization. Please apply any other charges or credits to deposit account 06-1050.

Respectfully submitted,

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